CRA 147 of 1989 Life Prisoner. (2)

Jail Appeal of Prisoner.

CF0000057367

314/Cr.P.C. Name. Omanshyam Father's name. Devsay.

Caste Ranidongari. Age. 30 yrs. sentenced to Life Imprisonment on 5.11.89 under section 302 IPC. by Shri. R.K. Shrivastava. A.S.J. KANKER Division Bench (Court)

ST NO 282/88

1. It explained to the prisoner that if he desires a wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days, unless the legal practitioner appears either. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the Court may proceed alone with the case and shall be obliged to give a hearing to any legal practitioner who should appear.

2. Date of application for Copy of Judgement. Brought personally on 6/11/89

3. Date on which copy read. 6.11.89

Date on which appeal sent. 7.11.89

4. Whether the prisoner wishes to be represented or not? Yes.

5. Name..

Confined in. Sub Jail. KANKER AND TRANSFERRED TO DIST. JAIL. JAGDALPUR.

Dt. 7.11.1989.

Forwarded to the A.C.J.M. Magisterial Kanker. Together with a (1) copy of judgement. (2) order passed in the case for favour of transmission to the proper appellate Court.

(1) Certified copy of Judgement ST. 282/88 dt 6.11.89.

(2) ST of Receipt in CJM Court.

(3) Receipt of record by appellate Court.

(4) Forwarded to the Court of A.S.J. Kanker.

C.J.M. Kanker.

Date of Receipt in Appellate Court. forwarded to D.J. Jagdalpur

4.12.89

P.T.O.

XI-HC-22

(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No.147/90 **सन्** 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B.: HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI DILIP RAO SAHEB DESHMUKH, JJ.

23-6-2005

Smt. Indira Tripathi, counsel for the appellant.

Shri U.N.S. Deo, Public Prosecutor for the State/ respondent.

Oral.

At the outset, Mr. Deo informed the Court that the accused/appellant has already been released on completion of the sentence on 18-12-2002 and to that effect he placed Xerox copy of the communication on record. However, learned counsel for the accused/appellant submits that she wants to argue this appeal on merit, therefore, she is permitted to argue.

The accused/appellant has preferred this appeal through Superintendent, Sub Jail, Kanker, being aggrieved by the judgment of conviction and sentence dated 6th November 1989 passed by the Additional Sessions Judge, Kanker in S.T. No.282/88 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of the offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In brief, the prosecution case is that on 14-6-88 the accused went to the forest along with his wife for collecting the wood, there he attacked his wife with an axe and thereafter, he wanted to commit suicide, therefore, he hanged himself with the help of a rope, on account of that rope was broken, therefore, he fell down on the earth. Thereafter, PW-3 Purshottam reached on the spot. On enquiry, the accused made extra judicial confession before him that he has murdered his wife. The said information was given to the villagers, therefore, they went to the site where the accused was lying and before them also the accused made extra judicial confession that he has committed murder of his wife. Thereafter, PW-5 Phaguram made a report Ex.-P/18 to the police station Narharpur.

After registration of the case, the S.H.O., Police Station prepared Panchnama of the dead body and the dead body was sent for postmortem examination to the hospital at Kanker where PW-1 Dr. M.M. Nawab conducted the postmortem on the dead body and prepared the report Ex.-P/17 in which he mentioned that there was cut injury on the right side of the neck extending up to back side in the size of 6x2 $\frac{1}{2}$ x 8 cm. Second injury was also cut injury on the back in the size of 4 cm

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

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below the injury No.1 in the size of 5x2 ½ x5 cm and cut injury was present on the right shoulder. On dissection of the body, he found that 5th cervical 2nd thoracic bones were ~~found~~ fractured. This injury was parallel to injury No.1 and according to the report, the above injuries were sufficient in the ordinary course of nature to cause the death. The cause of death was shock on account of excessive bleeding. Thereafter, the Investigating Officer took into possession the blood stained plain and plain soil from the scene of occurrence. He also took into possession the broken piece of rope and axe and other part of rope which was tied with Mango tree. After seizure of these articles, the same were sent for examination by the Forensic Science Laboratory from where they received the report Ex.-P/21.

Charge sheet was filed against the accused/appellant. The accused denied the charge, therefore, the prosecution has examined as many as 9 witnesses. Statement of the accused was recorded by the trial Court in which the accused denied the prosecution evidence and pleaded innocence about the crime. The trial Court after hearing Additional Public Prosecutor and counsel for the accused convicted the accused/appellant for the commission of the offence under Section 302 of the I.P.C.

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

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We have heard learned counsel for the parties.

Learned counsel for the accused/appellant did not dispute about homicidal nature of death of the deceased. However, she submits that the accused has been convicted on the basis of extra judicial confession and the extra judicial confession is a weak type of evidence. Merely, on the basis of that the accused could not have been convicted.

On the other hand, Mr. Deo supported the judgment of the trial Court.

We have perused the judgment and evidence available on record and we are of the opinion that the argument advanced by learned counsel for the accused/appellant has no substance for the reason that PW-3 Purshottam has categorically stated in his evidence that he saw that the accused was lying in his field and he was crying. On enquiry, he informed that he has committed murder of his wife. In the cross-examination, nothing has come on record which makes the evidence of this witness doubtful. The said evidence is corroborated by the evidence of PW-5 Phaguram. PW-5 Phaguram has also stated that the accused made extra judicial confession before him and stated that he has murdered his wife by attacking her with a Tangia.

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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Accordingly, he made a report to the Police Ex.-P/18. Similar is the evidence of PW-6 Santuram. Therefore, in view of the above evidence, there is no reason before this Court to disbelieve the evidence of these witnesses. Extra judicial confession made by the accused/appellant stands corroborated by other circumstantial evidence i.e. the accused after committing the murder of his wife, attempted to commit suicide with the help of a rope, but that rope was broken, therefore, he could not execute the suicide. The Investigating Officer, during the course of the investigation, took into possession the rope which was broken and which was being used to commit suicide by the accused. Other circumstance which supports extra judicial confession made by the accused before these witnesses was that the injuries which were found on the body of the deceased ~~were found to be~~ caused by axe and those injuries were on the same line, as was disclosed by the accused/appellant in extra judicial confession, therefore, medical evidence also corroborates extra judicial confession made by the accused.

Therefore, in view of the above, we are of the opinion that there is nothing before us to interfere with finding of the trial Court and there is nothing on record which goes to show

(पीछे देखिये)

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(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that these witnesses have given false evidence against the accused/appellant for any reason. In view of the above, we do not find any substance in this appeal, the same is liable to be dismissed and it is accordingly dismissed. **Sd/-** **L.C.BHADOO** **Judge** Barv	**Sd/-** **Dilip Raosaheb Deshmukh** **Judge**